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October 15, 2012

Ex Parte

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

On October 11, 2012, Ed Shakin, Maggie McCready and the undersigned of Verizon met with Nick Degani, Wireline Legal Advisor to Commissioner Pai, and met separately with Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn. On October 12, 2012, the same Verizon representatives met with Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel. In all three meetings, we discussed the upcoming mandatory special access data request and explained that the Commission should gather data that can demonstrate whether a market is contestable. We discussed why the Commission should take a forward-looking view to determine where the market is heading rather than focusing on backwards-looking data that reflect only what is happening today or has happened in the past. Among other things, to take a forward-looking view, the Commission should collect data about where providers offer service and where they have the ability to compete or provide service.

We specifically discussed the information the Commission should request and the questions that Verizon has recommended the Commission include in the data request. We explained why each of these categories, which we set forth in our July 31 and October 2 ex parte letters,¹ is necessary to the data request:

1. Identify by geographic area where you currently provide or are technically capable of providing retail or wholesale high-capacity services (such as DS1, DS3, Ethernet, and other high-capacity services).
2. Provide data or maps that show the geographic area where you or your affiliate offers or plans to offer retail or wholesale high-capacity services, whether wireline or wireless,

¹ Ex Parte Letter from Maggie McCready, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-25 & RM-10593 (October 2, 2012); Ex Parte Letter from Donna Epps, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-25 & RM-10593 (July 31, 2012).

within the next two years. Providers should note on the maps where they can offer service over existing facilities, on other leased facilities, or on facilities they plan to build.

3. Explain where you have submitted competitive bids to provide backhaul services to wireless providers or high-capacity services to other customers. Providers should also submit any business rules they rely upon to determine whether to submit a competitive bid.

We explained that the data identified in item one above regarding where a provider is “technically capable” of providing service can provide valuable information about where providers are able to provide service. For example, the Commission could obtain data about providers that have dark fiber available in an area, or have a fiber ring close enough to peel off fiber strands to serve a location. In those examples, these providers would be capable of providing service even if they are not currently providing service today.

We also explained that the second item above is important because it seeks data on where providers currently offer their service, and also where providers plan to offer their service. This is more than simply identifying areas where a provider actually provides service today, and this request will produce more forward-looking information than a snapshot of today’s marketplace. When a provider offers service in an area it holds itself out as willing and able to provide that service. For example, a provider may hold itself out to offer service throughout a state. Although its current customers may only be in parts of the state, the provider is willing and able to provide service throughout the state. Its marketing materials – including web pages, brochures, and advertisements – likely would reflect the areas in which the provider offers service to potential customers. Such offerings are also important evidence of retail competition. The Commission should ask providers to identify the areas in which they offer service – where they hold themselves out as willing and able to provide service via their marketing, advertising, and other representations to potential customers. As noted in the second item above, to the extent possible, providers should also identify where they offer services over owned or leased facilities. And the Commission should also ask providers to submit examples of marketing materials identifying or summarizing those areas as supporting backup.

On the third item above, we explained that all providers – including ILECs, CLECs, cable and others – should provide information about the locations where they have responded to RFPs or otherwise submitted competitive bids. Providers would not necessarily have to provide the actual RFP responses, but the Commission should ask for the locations for which they bid. To the extent possible this information should align with the time periods sought in the data request. If some providers’ business practice is not to keep this information, they should at a minimum be required to provide any information from the period following release of the data request through the data request’s due date. During this discussion, we provided copies of the confidential version of Verizon’s September 12, 2012 ex parte letter, which demonstrated that

Sprint is overhauling its wireless backhaul network by moving from ILEC special access to competitive providers' high-capacity wireless backhaul services.²

Lastly, we noted that while a regression model is a useful tool, it should not be the Commission's sole consideration when it determines whether a market is competitive. The Commission also needs to consider other evidence of competition that may not fit neatly into a model. For example, a regression model that focuses only on price impacts may fail to identify areas where there is substantial competition. The Commission's analysis of those areas cannot ignore qualitative information that demonstrates that markets are addressable. As an illustrative example, we discussed that Verizon is currently under price cap regulation in New York City despite intense competition. A model that looks only at the level of prices, to the exclusion of other evidence on competitive entry, may again not accurately assess the high level of competition in New York City. Focusing on price alone as a proxy for competition may not account for external factors such as New York City's higher than average costs of living, labor and materials, and real estate – all of which could discourage or prevent price declines. Consequently, the Commission's analytical framework must augment output from the regression model with qualitative data about the existence of competitive entry in the marketplace.

Sincerely,



cc: Priscilla Delgado Argeris
Nick Degani
Angela Kronenberg
Deena Shetler

² Ex Parte Letter from Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-25 & RM-10593 (September 12, 2012).